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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 915 OF 2002

Prabhu Jogal Nadage @
Prabhu Chitya Jogal,
At Bardi, Darjipada,
Tal. Palghar, Dist. Thane. ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. D.G. Khamkar for the appellant/accused.

Mrs. M.M. Deshmukh, A.P.P. for the respondent State.

CORAM: S.B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATED: 9TH MARCH, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. The accused appellant challenges his conviction and sentence under Section 302 of the Indian Penal Code by the judgment and order dated 14.8.2001 of the Additional Sessions Judge, Palghar.

2. The case of the prosecution is that Sanibai and the accused were living together after Sanibai's husband expired. The accused was married to another woman. According to the prosecution, the daughter of Sanibai,

Bharati, witnessed Sanibai and the accused quarrelling in the field on the issue of transfer of lands owned by Sanibai to the accused. The prosecution alleges that Bharati saw the accused tying Sanibai's hands with a rope and then lifting her and throwing her into the well situated in their agricultural lands. Bharati reported the matter to her maternal grandfather the next day after which Sanibai's body was fished out of the well. A police complaint was lodged and the inquest panchanama and spot panchanama were drawn up on 4th December, 1998. The post-mortem examination was also conducted. The accused was absconding for a while. He was arrested on 10.12.2000. The accused was charged for having murdered his wife under Section 302 of the Indian Penal Code. The case was then committed to the Sessions. The Additional Sessions Judge convicted the accused and sentenced him under Section 302 of the Indian Penal Code.

3. The prosecution has examined 7 witnesses to prove its case against the accused. PW-1 Bharati is the eye witness and complainant. PW-2 is a panch witness who has turned hostile. PW-3 is the other panch witness who has prepared the inquest panchanama. PW-4 is the father of the victim. PW-5 Sapana is Bharati's sister. PW-6 is the medical officer who performed the post-mortem

examination. PW-7 is the investigating officer.

4. We have scrutinized the evidence led before the Sessions Court and considered the impugned judgment. The Sessions Court, in our opinion, has arrived at proper findings and drawn correct inferences which we are not inclined to set aside. However, we have independently arrived at the same conclusions as are drawn by the Sessions Court.

5. PW-1 Bharati has spoken about the relationship between the accused and her mother. She has stated that she heard the victim and the accused quarrelling. When she went out in the field, she saw the accused tying her mother’s hands with a rope. According to this witness, the accused was demanding that her mother should transfer the land to his name and threatened to kill her in the event she refused. This witness has stated that when she tried to help her mother, the accused pushed her away. She has witnessed the accused throwing her mother into the well after tying her hands. This witness has stated that, after the incident she shouted for help and then proceeded to her maternal grandfather’s place and narrated the incident to him in the presence of her grandmother and uncle. She has stated that her mother’s body was fished out of the well

the next morning. This witness has stood the test of cross-examination. When it was found that the witness could not understand Marathi, she was questioned in dialect spoken by the Warli community. She has denied the suggestions put to her by the defence. In our view, this witness is a natural witness as she was residing with her mother. There is no reason to disbelieve this witness.

6. PW-2 was examined to prove the arrest panchanama. However, this witness has been declared hostile and, therefore, his testimony is not helpful to the prosecution. PW-3 is another panch witness who has been examined to prove the inquest panchanama.

7. The victim’s father has been examined as PW-4. He has corroborated the version of Bharati. He has stated that she reached his house around midnight on 3rd December, 1998 and narrated to him, his wife and his son, the incident which had occurred, leading to Sanibai being thrown into the well by the accused. This witness has stated that he sent his son to the police station immediately to report the incident. This witness has admitted that neither he nor Sanibai, the victim, had ever complained to the police about the accused beating her. Thus, the testimony of PW-4 corroborates that of

PW-1. PW-5 is a daughter of the victim and the elder sister of PW-1. She corroborates the evidence of PW-1 and PW-4 regarding the dispute between her mother and the accused over the transfer of lands to the name of the accused. This witness has heard of the incident from other relatives. However, she was present when the body of the victim was taken out of the well. She has stated that the victim's hands were tied. The cross-examination of this witness has not resulted in any discrepancies or contradictions in her testimony.

7. The medical officer who conducted the post-mortem examination has been examined as PW-6. This witness has opined that the victim died of cardio respiratory arrest due to asphyxia and pulmonary oedema on account of drowning. The doctor has been unable to pin-point the time of death. She has admitted that the internal injuries sustained by the victim could have been possible if she had accidently fallen into the well. She has also stated that the findings arrived at by her for the cause of death could be possible if a person was thrown into the well after the victim's hands were tied.

8. The investigating officer has proved the inquest panchanama and the spot panchanama. The rope and a shirt were seized. This witness states that the accused

was absconding and he was arrested two years after the incident. This witness has admitted that it was not possible to identify the rope which was seized as the one used by the accused to tie the victim's hands.

9. Thus the prosecution has proved that Sanibai's death was homicidal. In our opinion, the evidence of PW-1, the daughter of the victim, amply proves that the accused was responsible for Sanibai's death. In this view of the matter, we uphold the conviction and sentence under Section 302 of the Indian Penal Code imposed by the Additional Sessions Judge, Palghar.

10. Appeal dismissed.

(SMT. NISHITA MHATRE, J.) (S. B. MHASE, J.)